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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO MARTINEZ MONTES,

Defendant.

CASE NO. 3:23-CR-00314-CRB

**UNITED STATES' SENTENCING
MEMORANDUM AND MOTION FOR JOINT
CHANGE OF PLEA AND SENTENCING**

Date: September 27, 2023
Time: 10:00 a.m.
Court: Hon. Charles R. Breyer

I. OVERVIEW

The United States and the defendant, Pedro Martinez Montes, jointly request that the Court accept the proposed plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). This case is part of the United States Attorney's Office's efforts to disrupt the fentanyl and methamphetamine open-air drug market that exists in San Francisco's Tenderloin District (the Tenderloin) through a combination of enforcement and dispositions that prevent drug traffickers from returning to the Tenderloin. These efforts will occasionally take the form, as here, of prosecution of street-level dealing where the defendant has limited criminal history, leading the United States to seek expedited

prosecution, obtain a federal conviction, and enforce a strict three-year stay-away order that immediately excludes convicted drug traffickers from returning to the Tenderloin and thus dissuades them from engaging in further drug trafficking. For the reasons set forth below, the United States and the defendant believe that a below-Guidelines sentence—accounting for the time served in this expedited prosecution—alongside this geographical restriction meet the statutory requirements of Section 3553(a).

II. MOTION FOR JOINT CHANGE OF PLEA AND SENTENCING

To advance the goal of this accelerated disposition, the parties jointly move the Court to proceed to sentencing without a presentence investigation report during the same hearing as the defendant’s change of plea, or as shortly thereafter as is practicable. This will achieve the expedited proceeding contemplated by both parties. The Court may sentence without a presentence investigation report if it “finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553” and “explains its finding on the record.” Fed. R. Crim. Proc. 32(c)(1)(A)(ii); *see also* Fed. R. Crim. P. 32(b)(1), U.S.S.G. §6A1.1, Crim. Local Rule 32-1(b). The government respectfully submits that the record here—the Criminal Complaint, the Plea Agreement, and the parties’ sentencing memoranda, all detailing the defendant’s offense conduct and other factors relevant under § 3553—enable the Court to meaningfully exercise its sentencing authority under § 3553 and proceed to sentencing without the need for a presentence investigation report. The parties request that the Court explain its findings and the sufficiency of the record at time of sentence.

III. APPLICABLE GUIDELINES RANGE AND CRIMINAL HISTORY CATEGORY

The government calculates the following Guidelines range:

- | | | |
|----|--|-----|
| a. | Base Offense Level, U.S.S.G. §2D1.1(a)(5), (c)(8):
Defendant possessed between 100 and 400 KG of Converted Drug Weight ¹ | 24 |
| b. | Acceptance of Responsibility, U.S.S.G. §3E1.1: | - 3 |
| c. | Adjusted Offense Level: | 21 |

The government calculates a Criminal History Category of I (0 points).²

¹ See Addendum – Converted Drug Weight Table.

² The government has reviewed and produced in discovery the criminal history report for the

1 An Adjusted Offense Level of 21 and a Criminal History Category of I results in a Guidelines
2 range of 37 to 46 months.

3 The government also seeks a three-year term of supervised release (as required by statute) and
4 imposition of the \$100 mandatory special assessment.

5 **IV. SENTENCING RECOMMENDATION**

6 Consistent with the Plea Agreement in this case, the parties jointly request a sentence of time
7 served plus one day and a three-year term of supervised release that includes a special condition that the
8 defendant may not re-enter the Tenderloin during the period of supervised release. This stay-away
9 condition is a critical component of the plea bargain because it prevents the defendant from returning to
10 the Tenderloin, from where the defendant's conviction for drug trafficking arises.

11 **A. Section 3553 Factors**

12 **1. *Nature and circumstances of the offense and history and characteristics of the defendant***

13 The defendant is a 60-year-old male who was born in Honduras. According to the Department
14 of Homeland Security, the defendant lacks immigration status and/or is removable under U.S.
15 immigration law. There is an immigration detainer in place such that the parties expect the defendant
16 will be transferred to the custody of the Department of Homeland Security for removal proceedings
17 following his release from the custody of the U.S. Marshals. A criminal records check confirmed that
18 the defendant was previously arrested, on August 4, 2023, by the San Francisco Sheriff's Department for
19 the possession and sale of a controlled substance, and the possession and sale of cocaine. To the
20 government's knowledge, the defendant's only prior criminal conviction was from 2009, for which he
21 was sentenced to 180 days' custody, placing him in Criminal History Category I.

22 Between the hours of approximately 10:20 a.m. and 11:11 a.m. on September 12, 2023, law
23 enforcement personnel observed and recorded a male, later identified as the defendant, pacing around
24 the intersection of Hyde and Eddy Street, in San Francisco, California. The defendant was wearing a
25 grey sweatshirt with black/dark in color shoulders, a neon green collared undershirt, a black facial
26 covering, dark pants, and black and white shoes. The defendant constantly surveyed his surroundings as
27

28 defendant available through a law enforcement criminal records database.

1 if he were looking for, or looking out for, someone. The defendant was also witnessed pacing around,
2 crouching down, and counting money on multiple instances. During the period of surveillance, law
3 enforcement observed the defendant engage in approximately six suspected hand-to-hand narcotics
4 deals.

5 Based on the foregoing, the defendant was arrested and searched. Law enforcement recovered
6 approximately \$249 in United States currency in assorted denominations and the following controlled
7 substances (weights included) from the defendant's person:

8 Suspected Cocaine - 53.0 g

9 Suspected Cocaine Base - 63.1 g

10 Suspected Heroin - 61.0 g

11 Suspected Methamphetamine - 77.6 g

12 The suspected cocaine seized from the defendant's person later tested presumptive positive for
13 Cocaine HCl utilizing a TruNarc testing device; the suspected cocaine base seized from the defendant's
14 person tested presumptive positive for cocaine base utilizing a TruNarc testing device; and the suspected
15 methamphetamine seized from the defendant's person later tested presumptive positive for
16 methamphetamine utilizing a TruNarc testing device.

17 After his arrest, the defendant agreed to remain in custody during the pendency of this case. He
18 was arraigned on an information alleging possession with intent to distribute of cocaine, cocaine base,
19 methamphetamine.

20 In the Plea Agreement, the defendant agrees to plead guilty to Count One of the captioned
21 information: Possession with Intent to Distribute Cocaine in violation of 21 U.S.C. § 841(a)(1),
22 (b)(1)(C). Plea Agreement, ¶ 1. The defendant admits that law enforcement arrested and searched him
23 after observing him conduct multiple drug sales in the Tenderloin District, and that during the search
24 law enforcement found the above-listed controlled substances. *Id.* ¶ 2. The defendant admits that he
25 knowingly possessed these controlled substances, and that he possessed them with the intent to
26 distribute them to other persons. *Id.* ¶ 2. Defendant further admits that the \$249 in U.S. currency found
27 during the search represented the proceeds of his drug trafficking. *Id.* ¶ 2. Pursuant to the Plea
28

Agreement, the defendant acknowledges that a conviction in this case “makes it practically inevitable and a virtual certainty that [he] will be removed or deported from the United States.” *Id.* ¶ 1.

2. Need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; to afford adequate deterrence to criminal conduct; and to protect the public from further crimes of the defendant

The Tenderloin, defined in the Plea Agreement to include the historic Tenderloin District and much of the South of Market neighborhood, is in crisis. As the Court is well aware, the proliferation of highly addictive, potent, and inexpensive synthetic controlled substances like fentanyl and methamphetamine has exacted a crushing human toll in the Tenderloin. The Tenderloin open-air drug market not only creates suffering for its participants (including staggering amounts of overdoses and fatalities) but also dire externalities for the people and families that live and work in the Tenderloin, as well as for San Francisco itself. The effects of the defendant’s offense, considered as an individual act, are destructive; the effects of the offense, considered in the aggregate, are catastrophic.

Unsurprisingly, given the relevant conduct and amount of controlled substances the defendant possessed, the adjusted Guidelines range for the defendant’s conduct is 37 to 46 months. The defendant has limited prior criminal history. The proposed sentence—of time served plus one day and a three-year term of supervised release with a highly-restrictive geographic restriction—is a downward variance from the Guidelines range but one that the government submits is appropriate given the defendant’s conduct and criminal history, the unique problem the Tenderloin faces, and the need for deterrence and protection of the public.

In order for the defendant to receive this plea offer, the defendant waived detention and has been in continuous custody since arrest; the government offered the defendant a time-served plus one day sentence in exchange for the defendant’s agreement to promptly plead guilty and proceed to sentencing (including waiving indictment) within weeks of arrest; the defendant also agreed to be subject to a three-year term of supervised release that includes a strict stay-away condition from the Tenderloin. The defendant is on notice that a return to the Tenderloin (in violation of the defendant’s supervised release terms) will invite new charges or supervised release violations.

This disposition results in a drug trafficking conviction within weeks of arrest (not months or

years), immediate separation of the defendant from the Tenderloin, and prevention of the defendant from returning to the Tenderloin. The speed at which this case moved will free up other government resources to prosecute additional federal crimes, including in the Tenderloin.

B. The necessity of the proposed supervised release special conditions

A three-year term of supervised release is required by statute for the drug-trafficking offense to which the defendant has agreed to plead guilty, 21 U.S.C. § 841(b)(1)(C), and it is essential to this disposition. In particular, the special stay-away condition of release allows the government to accomplish one of its primary goals related to protection of the public: to immediately separate drug traffickers from the Tenderloin (given the defendant has remained in custody from the time of arrest) and to effect a strict stay-away from the Tenderloin for three years. Under the terms of supervised release as contemplated herein, not only will the defendant be prohibited from engaging in any further unlawful conduct, but the defendant will be prohibited from entering the Tenderloin without prior approval by U.S. Probation:

Unless authorized by U.S. Probation, the defendant shall neither enter nor be present in the area in San Francisco bordered on the west by Van Ness Avenue, on the north by Geary Street, on the east by Powell Street and 3rd Street, and on the south by Howard Street.

Combined with a suspicionless search condition, to which the parties have also agreed, Section 3553(a)'s goals of protection of the public and meaningful deterrence will be significantly advanced by the terms of this agreement, and this prosecution's impact on illicit drug trafficking in the Tenderloin will be both immediate and sustained. The stay-away condition is also necessary given the particular circumstances of Tenderloin drug trafficking, where the Court has repeatedly encountered recidivism from previously sentenced defendants, including those who have been removed from the country but who nonetheless returned to sell controlled substances in the Tenderloin. *See, e.g., United States v. Luis Almicar Erazo-Centeno*, 3:23-cr-00002-CRB; *United States v. Gamez-Arguilio*, 3:17-CR-00553-CRB.

On the facts of this particular case, under the § 3553(a) factors and given the provisions of the Plea Agreement, the government respectfully submits that the contemplated disposition here is sufficient but not greater than necessary to accomplish the goals of § 3553(a).

V. CONCLUSION

For these reasons, the government recommends that the Court sentence the defendant to a sentence of time served plus one day, to be followed by a term of supervised release of three years and the special conditions agreed to by the parties in the Plea Agreement, including the stay-away condition.

DATED: September 27, 2023

Respectfully Submitted,

ISMAIL J. RAMSEY
United States Attorney

/s/ Dan Karmel
DAN M. KARMEL
Assistant United States Attorney

ADDENDUM – CONVERTED DRUG WEIGHT TABLE³

Substance	Amount Possessed by Defendant	Conversion	Converted Drug Weight
Cocaine	53.0	1 gram = 200 grams	10.6 KG
Cocaine Base	63.1	1 gram = 200 grams ⁴	12.62 KG
Heroin	61.0	1 gram = 1 kilogram	61 KG
Methamphetamine	77.6	1 gram = 2 kilograms	155.2 KG
Total	-	-	239.42 kilograms

³ See §2D1.1, Application Note 8(D).

⁴ Pursuant to the Attorney General's December 16, 2022, memorandum, *Additional Department Policies Regarding Charging, Pleas, and Sentencing in Drug Cases*, the government recommends that the converted drug weight for the cocaine base be determined by reference to the conversion rate for powder cocaine.